PUBLIC HIGHWAY BRIDGE CROSSING AGREEMENT

EXHIBIT D

AMOUNG THE

UNION PACIFIC RAILROAD COMPANY

THE

COMMUTER RAIL DIVISION OF THE REGIONAL TRANSPORTATION AUTHORITY

KANE COUNTY

COVERING

THE CONSTRUCTION OF THE NEW BUNKER ROAD UNDERPASS GRADE SEPARATION CROSSING

٩Т

RAILROAD MILE POST 40.80 – GENEVA SUBDIVISION

AT OR NEAR

LAFOX, KANE COUNTY, ILLINOIS

PUBLIC HIGHWAY BRIDGE CROSSING AGREEMENT

Bunker Road
UPRR Mile Post 40.8 – Geneva Subdivision
LaFox, Kane County, Illinois

THIS AGREEMENT (Agreement), made and entered into as of the <u>14th</u> day of <u>August</u>, <u>2003</u>, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, to be addressed at 1400 Douglas Street, MS1690, Omaha, Nebraska 68179-1690 (hereinafter either the "Company" or the "Union Pacific"), the **COMMUTER RAIL DIVISION OF THE REGIONAL TRANSPORTATION AUTHORITY**, a division of an Illinois municipal corporation to be addressed at Real Estate and Contracts Department, 547 W. Jackson Boulevard, Chicago, Illinois 60661 (hereinafter referred to as "Metra") and the **COUNTY OF KANE**, a body corporate and politic of the State of Illinois, to be addressed at Department of Transportation, 41W011 Burlington Road, St. Charles, Illinois 60175 (hereinafter referred to as the "County"). Union Pacific, Metra and the County are hereinafter sometimes individually referred to as a "Party" and collectively referred to as the "Parties."

WITNESSETH:

WHEREAS, Metra proposes to undertake as its project (hereinafter referred to as the "Public Highway Bridge Project" or "Project"), the design, permitting, and construction of a three track railroad bridge / highway underpass over the northerly extension of Bunker Road at LaFox, Kane County, Illinois, by means of a bridge structure (hereinafter referred to as the "Bridge Structure"), all substantially asshown in preliminary and detailed plans (hereinafter referred to collectively as the "Plans and Specifications") identified on Exhibit A, and all modifications, amendments and supplements thereto being subject to prior written approval by the Company's authorized representative; and

WHEREAS, for the Project, Metra and the County desire the right to use and the Company is willing to permit the use of that portion of the right of way of the Union Pacific approximately between Mileposts 40.7 and 40.9 on the Geneva Subdivision specifically included in the Temporary Construction Easement and/or Permanent Easement, marked Exhibits 1 and 2 respectively, attached hereto and made a part hereof (hereinafter the "Crossing Area"), and delineated on the attached print, marked Exhibit 3, attached hereto and hereby made a part hereof, in accordance with the terms of said applicable Temporary Construction Easement/or Permanent Easement and this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and conditions set forth in this Agreement and other good and valuable consideration the receipt and adequacy of which being hereby acknowledged, it is mutually agreed by and between the Parties as follows:

ARTICLE 1 - GENERAL AGREEMENT

- A. The foregoing recitals are hereby incorporated in and made a part of this Agreement.
- B. The Union Pacific and Metra have heretofore entered into Agreement No. III for Construction of Fixed Facilities dated September 11, 1981, and amended from time to time (hereinafter "FFA"). Notwithstanding anything to the contrary contained within this Agreement, as between Metra and the Union Pacific, with respect to the Project, the terms of the FFA shall govern the contractual obligations and

responsibilities of Metra and the Union Pacific and the ownership of the Facilities, including, without limitation, the Bridge Structure; provided, however, that Metra's contractors and subcontractors (hereinafter collectively "Metra's Contractor's") shall be bound by the terms and provisions of this Agreement. As between Metra and the Union Pacific, in the event of a conflict, between the terms and provisions of the FFA and the terms and provisions of this Agreement, the terms and provisions of the FFA shall take precedence and control. As between Metra's Contractors, the County and the Union Pacific, in the event of a conflict, between the terms and provisions of the FFA and the terms and provisions of this Agreement, the terms and provisions of this Agreement shall take precedence and control.

- C. With regard to the Project, Metra, the County and the Union Pacific shall perform and abide by all Plans and Specifications. Metra, Metra's Contractors, the County and the County's Contractors shall perform and abide by all the Insurance Provisions marked Exhibit B, attached hereto and made a part hereof. Metra's Contractors and the County, and the County's contractors, shall perform and abide by all the General Provisions marked Exhibit C, attached hereto and made a part hereof; and Contractor's Right of Entry Agreement marked Exhibit D, attached hereto and hereby made a part hereof.
- D. The County, Metra and Union Pacific have agreed to participate in the Project, if the following components are included in the Project:
 - 1. Metra agrees to pay for all costs related to the design and construction of the Bridge Structure. Due to timing concerns, Metra does not intend to have Union Pacific request funds from the Illinois Commerce Commission (hereinafter "ICC") Grade Crossing Safety Fund.
 - 2. After the Bridge Structure has been constructed, County agrees to assume all future maintenance for the Bridge Structure. "Bridge Structure" as used herein shall be defined as the entire superstructure of the Project underpass including all non-track related steel members, concrete deck, ballast stops, handrails, walkways fencing, lighting, deck drains and waterproofing as well as associated substructure including but not limited to wingwalls, piers, abutements, foundations, highway approaches and retaining walls within the right of way of the Company. Bridge Structure does not include railroad track, railroad ties, railroad ballast, railroad wire lines, signal systems or lighting systems including but not limited to telephone, telegraph, fiber optic or other utilities, or other railroad appurtenances.
 - 3. County, Metra and Union Pacific will sign the petition to the ICC in support of the Project. Union Pacific will prepare the petition. The petition and all construction documents will be submitted to the County and Metra for approval prior to the submission to the ICC.
 - 4. Metra is designated by all Parties, including Union Pacific, as the lead agency for the construction of the Bridge Structure over Bunker Road, as extended. The County will be responsible for any and all costs of extending Bunker Road. Metra will reimburse Union Pacific under the FFA for any of the design or construction costs incurred by the Union Pacific for the Bridge Structure.

Because the Metra New Starts Project will be adding a third track through the area where the Bridge Structure will be constructed, it is agreed by the Company and Metra that the Project will be completed without establishment of a shoofly and related trackage and switches. The Project must be completed at track level, and contractor forces out of this area by July 7, 2005, in order for a shoofly not to be required. However, if during construction crossover switches are needed, such switches will be installed and removed by the Company from time to time as part of the Project, the cost of which shall be the responsibility of Metra, in order to maintain train movements over the Company's lines of railroad on an uninterrupted basis.

ARTICLE 2 - UNION PACIFIC GRANT

The Union Pacific hereby grants to Metra and the County, the right to construct, operate, maintain, repair and renew the Public Highway Bridge Project which includes the Bridge Structure within the Crossing Area subject to the terms and provisions of the Temporary Construction Easement and the Permanent Easement. It is agreed that Union Pacific shall maintain and repair any track structure and any track substructure on and adjacent to the Bridge Structure. As used herein, "track structure" is defined as rail and ties and "track substructure" is defined as railroad ballast. The County shall maintain and repair and cause to be maintained and repaired the Bridge Structure including the removal of graffiti therefrom . The County shall be responsible for roadway lighting beneath the underpass.

ARTICLE 3 - COMPENSATION

Metra shall pay to and reimburse the Union Pacific under the FFA for all costs and expenses incurred by Union Pacific as a result of the design or construction of the Project, except as otherwise provided in this Agreement. The Plans and Specifications, and special provisions for the Project, shall be prepared by or for Metra at its expense; and all such Plans and Specifications, and special provisions, affecting the interests of the Company, shall be subject to the written approval of the Company's authorized representative, which approval shall not be unreasonably withheld or delayed.

- A. Union Pacific shall send progressive and detailed billing to Metra in accordance with the provisions of the FFA, for actual costs incurred by Union Pacific in performing any work pursuant to this Agreement including, but not limited to, actual costs of preliminary engineering review and work, inspection of Project work performed by Metra's contractors, procurement of materials and deliveries to the job site, manpower and the Union Pacific's normal and customary additives associated therewith.
- B. Within 120 days after the Union Pacific has completed its work, Union Pacific shall submit its final billing to Metra. Metra shall pay Union Pacific the amount set forth in such billing in accordance with the provisions of the FFA. Notwithstanding the payment provisions of this Paragraph B, nothing in this Paragraph B shall prohibit or hinder Metra from auditing Union Pacific's cost records as set forth in Article 22.
- C. All bills submitted by Union Pacific shall be in accordance with and subject to the terms and provisions of 23 CFR 140, Subpart I and 23 CFR 646, Subpart B. Metra shall not have any obligation or liability to pay any bill submitted by Union Pacific that is received by Metra after twelve (12) months after Union Pacific has completed all of its work set forth in this Agreement.

ARTICLE 4 - CERTIFICATE OF INSURANCE

A. Before any work on the Crossing Area begins, Metra will provide the Union Pacific with evidence of self- insurance or a Certificate of Insurance issued by an acceptable insurance carrier providing the insurance coverage required pursuant to Exhibit B of this Agreement in a letter or letters of self-insurance or a policy or policies each containing the following endorsement:

"Union Pacific Railroad Company is named as additional insured with respect to all liabilities arising out of Insured's performance of the work required for the Public Highway Bridge Project.

- B. Metra WARRANTS that this Agreement has been thoroughly reviewed by its insurance agent(s)/broker(s) and that said agent(s)/broker(s) has been instructed to procure insurance coverage and an endorsement as required herein.
- C. All insurance correspondence shall be directed to: Union Pacific Railroad Company, Thomas N. Andryuk, Manager Field Engineering, 500 West Madison St., Suite 3610, Chicago, IL 60661
- D. Metra may self-insure all or a portion of the insurance coverage required hereunder, subject to Union Pacific's review and approval. However, Metra's Contractors and Subcontractors as hereinafter defined shall obtain and provide evidence of insurance coverage pursuant to Exhibit B of this Agreement. Kane County is a self insurer and may self insure any or all insurance coverage or any portion thereof required to be provided by Kane County pursuant to any provision of this Agreement or pursuant to any Exhibits attached to this Agreement. However, the County's Contractors and Subcontractors as hereinafter defined shall obtain and provide evidence of insurance coverage pursuant to Exhibit B of this Agreement.

ARTICLE 5 - WORK TO BE PERFORMED BY CONTRACTOR

To the extent that independent Contractor(s), Subcontractor(s) and Materialmen (herein referred to as Contractors or Subcontractors, respectively, and Contractor(s) and Subcontractor(s) collectively) are to perform any of the work on the Project (including design, initial construction, material supply and subsequent relocation or substantial maintenance and repair work), then Metra and the County shall require in its Construction Agreement with the Contractor, or with regard to maintenance thereafter, the provisions found in Exhibit C, and Metra and the County shall require each of its Contractors and Subcontractors to execute the Union Pacific's Right of Entry Agreement attached hereto as Exhibit D. Metra and the County acknowledges receipt of a copy of the Right of Entry Agreement and understands its terms, provisions, and requirements, and will inform its Contractors, and Subcontractors of the need to execute and deliver the Right of Entry Agreement. Under no circumstances will Metra's and the County's Contractors and Subcontractors be allowed onto Union Pacific's premises including but not limited to the Crossing Area without first executing the Right of Entry Agreement.

ARTICLE 6 - PROJECT DRIVEN OBLIGATIONS

As part of the Project, Union Pacific may make any and all changes, alterations or relocations to its property, whether temporary or permanent, and may provide flagging and other protective services and devices, which in the Union Pacific's judgment may be or become necessary or expedient within the Union Pacific's right-of-way because of the Project.

ARTICLE 7 - PLANS AND SPECIFICATIONS

The Plans and Specifications for the Bridge Structure and the approaches shall be prepared by or for Metra at its expense; and all such plans, specifications, and special provisions, affecting the interests of the Company and the County, shall be subject to written approval, which shall not be unreasonably withheld nor delayed, by the authorized representative of the Company or the County.

ARTICLE 8 - <u>WIRE LINES, APPURTENANCES, SIGNAL SYSTEMS & YARD LIGHTING</u> <u>SYSTEMS</u>

That portion of the Plans and Specifications related to the plans and estimates of costs for changes in wire lines, appurtenances and signal systems on the Company's right-of-way, as necessitated by the Project, shall be prepared by the Company at the expense of Metra, provided that Metra approves such preparation

expenses in advance; and all such plans and estimates shall be subject to written approval by an authorized representative of Metra prior to commencement of the said changes.

ARTICLE 9 - CHANGES TO PLANS AND SPECIFICATIONS

No changes shall be made to the Plans and Specifications without the mutual consent in writing of the Union Pacific, the County and Metra, which consent shall not be unreasonably withheld or delayed.

ARTICLE 10 - DISTRIBUTION OF WORK

Metra and the Union Pacific shall construct or cause to be constructed, in substantial accordance with the Plans and Specifications, the following items of work:

A. WORK BY METRA

Metra shall furnish or cause to be furnished, at its expense, all the labor, materials and equipment required to perform and complete the Project including but not limited to:

- (1) The preliminary engineering required for preparation of the Plans and Specifications as set forth in the Recitals and Article 7 above.
- (2) Incidental work necessary to complete the items hereinabove specified.

B. WORK BY THE COMPANY

The Company shall furnish or cause to be furnished, at the expense of Metra, and in substantial accordance with the Plans and Specifications, all labor, material and equipment required to perform and complete:

- (1) All temporary and permanent alterations or relocations of railway communication and signal wire lines, signals and railroad appurtenances on its right-of-way as may be necessitated by the construction of the Bridge Structure.
- (2) Engineering and inspection provided for in Article 15.
- (3) Incidental work necessary to complete the items hereinabove specified.

ARTICLE 11 - CONTRACTOR COMPLIANCE

Metra shall require its Contractor (or Contractors) to perform his (or their) work in accordance with the Plans and Specifications applicable to the Project in effect on the date of invitation for bids or as may be amended by agreement between Metra, the County and Company from time to time.

ARTICLE 12 - INDEMNITY

In addition to the indemnification provisions contained in any agreements entered into by and between Metra and its Contractor as required by Section 9 of the General Provisions to this Agreement, Metra agrees to the extent allowed by law, to indemnify, hold harmless and defend, including the payment of reasonable attorneys' fees and all defense costs of the Company, from and against any and all loss or damage to property, and injury to or death arising out of the construction of the Project, which is caused by the negligence of Metra,

or the negligence, or acts or omissions of the Contractor and/or Subcontractor(s), or the authorized representatives, officers, agents or employees, of Metra, or of the Contractor and/or Subcontractor(s) or any third person(s) or entities except to the extent caused by the negligence, acts or omissions, or fault of the Company or its authorized representatives, officers, agents or employees.

In addition to the indemnification provisions contained in any agreements entered into by and between the County and its Contractor as required by Section 9 of the General Provisions to this Agreement, the County agrees to the extent allowed by law, to indemnify, hold harmless and defend, including the payment of reasonable attorneys' fees and all defense costs of the Company, from and against any and all loss or damage to property, and injury to or death arising out of the maintenance, inspection, removal or replacement of the Bridge Structure, which is caused by the negligence of the County, or the negligence, or acts or omissions of the Contractor and/or Subcontractor(s), or the authorized representatives, officers, agents or employees, of the County, or of the Contractor and/or Subcontractor(s) or any third person(s) or entities except to the extent caused by the negligence, or acts or omissions, or fault of the Company or its authorized representatives, officers, agents or employees.

ARTICLE 13 - FLAGGING

All railroad flagging shall be provided and billed by the Company in accordance with the provisions of the FFA or the General Provisions, as applicable, when in the sole judgment of the Company such railroad flagging is necessary. All such flagging cost shall be deemed a Project cost, or, subsequent to completion of the Project, a cost to the County, if County is performing its inspection and maintenance obligations under Article 20 hereof.

Flagging bills will be presented by the Company to Metra on a monthly basis with a final bill presented after completion of the Project. Flagging bills for flagging costs incurred by the County will be presented by the Company to the County on a monthly basis subsequent to completion of the Project.

ARTICLE 14 - PRE-CONSTRUCTION MEETING

Subsequent to the award of any contract (or contracts), and before any work is started on the Project, a Pre-construction Meeting shall be held between the representatives of Metra, the County, the Company and the interested Contractor and Subcontractors, at a time and place as designated by Metra's representative, for the purpose of coordinating the work to be performed by the several Parties, and at which time a schedule of operations will be adopted.

ARTICLE 15 - INSPECTION PROJECT COSTS

Each Party shall provide the necessary construction engineering and inspection for carrying out its work as herein set forth, and the costs for such services shall be Project costs and borne by Metra.

ARTICLE 16 - CLEARANCES

The temporary minimum clearances, with reference to the Company's track, of any necessary falsework, bracing or forms as required for the construction of the Bridge Structure, shall be as provided in Exhibit C hereto.

ARTICLE 17 - NOTICE

*)

Metra shall require its Contractor(s) and Subcontractor(s), before entering upon the Company's right-of-way for performance of any construction work, or work preparatory thereto for the Project, to notify the authorized representative of the Company at least 5 business days in advance for the occupancy and use of Company's right-of-way outside the limits of the structure, and to comply with Company's recommendations relative to the requirements for railroad clearances, operation and general safety regulations, including execution and delivery of Company's Contractor's Right of Entry Agreement.

ARTICLE 18 - SAFETY

In addition to the terms of Sections 3 and 8 of the General Provisions, the safety and continuity of operation of the traffic of the Company shall be at all times protected and safeguarded and Metra shall ensure that its Contractor(s) and Subcontractor(s) perform the work for the Project accordingly. Whenever the work for the Project may affect the safety of trains, the method of doing such work shall first be submitted to the Company's authorized representative in writing for his approval in writing without which it shall not be commenced or prosecuted. Such approval shall not be unreasonably withheld. The approval of the Company's authorized representative shall not be considered as a release from responsibility, or liability for any damage which the Company may suffer, or for which it may be held liable by the acts of the Contractor, or those of his Subcontractor(s), or those of their employees.

The work for the Project shall be performed at such times and manner as to not unnecessarily interfere with the movement of trains or traffic upon the Company's tracks and the Contractor(s) shall use all reasonable care and caution in order to avoid accidents, damage, delay or interference with the Company's trains or other facilities. The Company has the right to stop work on the Project, after notice to Metra, if in its opinion the manner in which the Project is being constructed adversely impacts rail safety or is not in accordance with the Plans and Specifications for that portion of the Project on Company right-of-way or that affects the rail operations of the Company. Should the Company deem it necessary to stop work on the Project, the authorized representative of Metra_and the Company shall meet within 48 hours to discuss required actions to resume work.

ARTICLE 19 - COMPLETION CONDITION

Metra shall require its Contractor(s) and Subcontractor(s), upon the completion of the work of such Contractor(s) and Subcontractor(s), to remove from within the limits of the Company's right-of-way all machinery, equipment, surplus materials, falsework, rubbish or temporary buildings of such Contractor(s) and Subcontractor(s), and to leave the right-of-way upon which the said Contractor(s) and Subcontractor(s) carried on operations in a neat condition, with adequate surface erosion protection satisfactory to the authorized representative of the Company.

ARTICLE 20 - MAINTENANCE

When the construction of the Project is completed, the County shall maintain at its expense, or by agreement with others, provide for the maintenance of the Bridge Structure, including all piers, abutments, substructure, superstructure, and appurtenances, and the approaches and retaining walls located within the Company's right-of-way. In the event of railroad derailments, accidents or collisions caused in whole or in part by the negligence of the Company, and resulting in damage to the Bridge Structure, the County shall make the repairs necessary to restore the said Bridge Structure substantially to its former condition as soon as possible, and the Company agrees to reimburse the County for its pro rata share of the actual cost of such

repairs. The Company shall maintain, at its expense, or by agreement with others, the trackwork, and any railroad signals as set forth in Article 2.

ARTICLE 21 - OWNERSHIP

The entire Bridge Structure, the highway approaches, piers, abutments, retaining walls and other ancillary facilities to be constructed pursuant to this Agreement within the Company's right-of-way shall be the property of Metra upon its completion, except as otherwise provided herein. The Parties agree that, subsequent to completion of the Project, Metra shall transfer ownership of the Bridge Structure to County by means of an agreement to be entered into between Metra and County.

Except as may otherwise be contained in this Agreement to the contrary, the Company and Metra will not be responsible for reconstructing, removing or replacing any portion of the aforesaid items. Except as may otherwise be contained in this Agreement to the contrary, the County specifically agrees to hold harmless, indemnify to the extent allowed by law and reimburse the Company and Metra from and against any obligation for replacement, removal or reconstruction of the aforesaid items that may be placed on the Company or Metra by operation of law or otherwise. It is specifically agreed hereto that the County shall assume all such obligations that may be incurred by the Company or Metra.

ARTICLE 22 - ACCOUNTING

All Parties to this Agreement shall keep an accurate and detailed account of the actual cost and expense as incurred by them, or for their account, in the performance of the work for the Project. They agree to provide copies upon request.

The books, papers and accounts of the Parties, so far as they relate to items of expense, labor and materials, or are in any way connected with the work herein contemplated, shall at all reasonable times during regular office hours be open to inspection and audit by agents and authorized representatives of the Parties for a period of three (3) years from the date final payment has been received by the Union Pacific.

ARTICLE 23 - RIGHT-OF-WAY ACCESS

In order to fulfill its maintenance obligation, the County shall have access to the Bridge Structure at all times within the Permanent Easement areas for the performance of inspections, repair, maintenance and renewals. The Company shall be notified in writing at least 48 hours in advance whenever such activities are performed. All inspections, repair, maintenance or renewal work shall be performed in accordance with the applicable Company Guidelines For Design and Construction of Grade Separation Underpass Structures in effect on the date the work is performed, however, such Guidelines shall not apply to routine highway maintenance tasks including but not limited to snowplowing, street sweeping, pavement striping and the like.

ARTICLE 24 - CANCELLATION

In the event that delays or difficulties arise in securing local approval, or in acquiring rights-of-way, or in settling damages or damage claims, or for any other cause which in the opinion of Metra render it impracticable to proceed with the construction of the Project, then at any time before a construction contract is executed or actual construction is started, Metra may serve formal notice of cancellation upon the Company and County and this Agreement shall thereupon become null and void, and Metra shall reimburse Company for all costs and expenses incurred for the Project.

٦)

ARTICLE 25 - ASSIGNMENT

This Agreement shall not be assigned by any Party without the written consent of the other Parties. Subject hereto, this Agreement shall be binding upon and inure to the benefit of the Parties, their successors and assigns.

ARTICLE 26 - EFFECTIVE DATE AND TERM

This Agreement shall become effective as of the date first herein written, or the date work commences on the Project, whichever is earlier, and shall continue in full force and effect until terminated as herein provided.

ARTICLE 27 - SEVERABILITY

If any provision of this Agreement, or any paragraph, sentence, clause, phrase, or word or the application thereof is held invalid, the remainder of this Agreement shall be construed as if such invalid part were never included and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law provided that the Agreement, in its entirety as so reconstituted, does not represent a material change to the rights or obligations of the Parties.

ARTICLE 28 - CONTROLLING LAW

This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois without regard to the conflicts of laws principles thereof. All actions or proceedings arising directly or indirectly or otherwise in connection with, out of, or from this Agreement shall be litigated only in a court having a situs within Kane County of the State of Illinois.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in DUPLICATE as of the date first herein written.

UNION PACIFIC RAILROA

By_

Director Contracts

COMMUTER RAIL DIVISION REGIONAL TRANSPORTATION

AUTHORITY

Title EXECUTIVE DIRECTOR

KANE COUNTY

Chairman

(Seal)



EXHIBIT A

To Public Highway Bridge Crossing Agreement Identification of Plans and Specifications Design Plans prepared by DMJM Harris dated May 23, 2003

(See Recital)

Design Specifications dated February 28, 2003

With 78 Pages and 295 Pages, respectively including Any Addendums Thereto

EXHIBIT B

To Public Highway Bridge Crossing Agreement

Insurance Provisions (See Article 1, Paragraph C)

EXHIBIT B

TO PUBLIC HIGHWAY BRIDGE CROSSING AGREEMENT

INSURANCE PROVISIONS

With respect to Metra's construction of the Project, Metra shall provide evidence of self-insurance, as provided in Article 4 of the Public Highway Bridge Crossing Agreement. At their sole cost and expense, Metra's Contractors and/or Subcontractors, shall procure the following kinds of insurance and promptly pay when due all premiums for that insurance. With respect to Kane County's subsequent maintenance of the Bridge Structure, the Railroad Protective Liability Insurance described in Paragraph D below and the other insurance coverage described in Paragraphs A (excluding waiver of governmental immunity [ISO Form GL 24 14 or equivalent]), B and C below, shall be kept in force by Kane County, or its agents, contractors and subcontractors, at their sole cost and expense, during any construction or maintenance (other than routine highway maintenance) on the Bridge Structure.

- A. General Public Liability insurance providing bodily injury, including death, personal injury and property damage coverage with a combined single limit of at least \$5,000,000 each occurrence or claim and a general aggregate limit of at least \$10,000,000. This insurance shall provide Broad Form Contractual Liability covering the terms of this Agreement including but not limited to the indemnity provisions contained in this Agreement, Underground Hazard, Broad Form Property Damage, a waiver of governmental immunity (ISO Form GL 24 14 or equivalent), severability of interests and name Union Pacific as an additional insured with respect to all liabilities arising out of Metra's, and its agents, contractors and subcontractors obligations to Union Pacific in this Agreement. Coverage shall be purchased on an "occurrence" basis.
 - B. Automobile Public Liability insurance providing bodily injury and property damage with a combined single limit of at least \$2,000,000 each occurrence or claim. This insurance shall provide contractual liability by endorsement ISO Form CA 00 25 or equivalent covering all motor vehicles including hired and non-owned, mobile equipment to the extent it may be excluded from general liability insurance, severability of interests and name Union Pacific as an additional insured with respect to all liabilities arising out of Metra's, and its agents, contractors and subcontractors obligations to Union Pacific in this Agreement.
- C. Worker's Compensation insurance covering the statutory liability as determined by the compensation laws of the state of Illinois and Employers' Liability with a limit of at least \$500,000.
- D. Railroad Protective Liability insurance naming Union Pacific as insured with a combined single limit of \$2,000,000 per occurrence with a \$6,000,000 aggregate. The policy form shall be AAR-ASHTO with broad form coverage for "Physical Damage to Property" (ISO Form GL 00 30) or as revised ISO-RIMA (Form CG 00 35) and include pollution arising out of fuels and lubricants brought to the job site (ISO Form CG 2831 or equivalent).

Metra and Kane County, or their respective agents, Contractors and Subcontractors hereby waive their right of subrogation, as respects the above insurance policy(ies), against Union Pacific for payments made to or on behalf of employees of Metra or Kane County or their respective agents, Contractors and Subcontractors and for loss of their owned or leased property or property under their care, custody and control while on or near Union Pacific's right-of-way or other real property. With respect to Metra's construction of the Project and Kane County's subsequent maintenance if the Bridge Structure, Metra or Kane County, as applicable, or its agents', Contractor's and Subcontractor's insurance shall be primary with respect to any insurance carried by Union Pacific.

Metra and Kane County and their respective agents, Contractors and Subcontractors, as applicable, shall furnish to Union Pacific certificate(s) of insurance evidencing the required coverage and endorsement(s) and upon request a certified duplicate original of any of those policies. The insurance company(ies) issuing such policy(ies) shall notify Union Pacific in writing of any material alteration including any change in the retroactive date in any "claims-made" policies or substantial reduction of aggregate limits, if such limits apply, or cancellation thereof at least thirty (30) days prior thereto.

The insurance policy(ies) shall be written by a reputable insurance company or companies acceptable to Union Pacific or with a current Best's Insurance Guide Rating of B and Class VII or better. Such insurance company shall be authorized to transact business in the state(s) affected by this Agreement.